

MANDATE

09-2718-cv

Janus Capital Mgmt. LLC v. Howard Vogel Retirement Plan, et al.

UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

SUMMARY ORDER

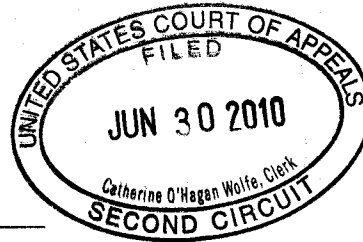
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RULINGS BY SUMMARY ORDER DO NOT HAVE PRECEDENTIAL EFFECT. CITATION TO A SUMMARY ORDER FILED ON OR AFTER JANUARY 1, 2007, IS PERMITTED AND IS GOVERNED BY FEDERAL RULE OF APPELLATE PROCEDURE 32.1 AND THIS COURT'S LOCAL RULE 32.1.1. WHEN CITING A SUMMARY ORDER IN A DOCUMENT FILED WITH THIS COURT, A PARTY MUST CITE EITHER THE FEDERAL APPENDIX OR AN ELECTRONIC DATABASE (WITH THE NOTATION "SUMMARY ORDER"). A PARTY CITING A SUMMARY ORDER MUST SERVE A COPY OF IT ON ANY PARTY NOT REPRESENTED BY COUNSEL.

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Daniel Patrick Moynihan United States Courthouse, 500 Pearl Street, in the City of New York, on the 30th day of June, two thousand ten.

PRESENT:

RALPH K. WINTER,
JOSEPH M. McLAUGHLIN,
DEBRA ANN LIVINGSTON,
Circuit Judges.



IN RE: OXFORD HEALTH PLANS, INC.:

JANUS CAPITAL MANAGEMENT LLC,

Claimant-Appellant,

v.

(09-2718-cv)

HOWARD VOGEL RETIREMENT PLAN, PBHG GROWTH II PORTFOLIO, PBHG LARGE CAP GROWTH PORTFOLIO, PBHG SELECT 20 PORTFOLIO, PBHG LARGE CAP GROWTH FUND, PBHG LARGE CAP 20 FUND, PUBLIC EMPLOYEES RETIREMENT ASSOCIATION OF COLORADO,

Lead Plaintiffs,

METRO SERVICES, INC., et al.,

Plaintiffs,

1 OXFORD HEALTH PLANS, INC., STEPHEN F. WIGGINS, WILLIAM M. SULLIVAN,
2 JEFFREY H. BOYD, ANDREW B. CASSIDY, ROBERT M. SMOLER, DAVID A FINKEL,
3 BRENDAN R. SHANAHAN, ROBERT B. MILLIGAN, JR., JAMES B. ADAMSON, FRED F.
4 NAZEM, THOMAS A SCULLY, BENJAMIN M. SAFERSTEIN, JOHN P. DRISCOLL, DAVID
5 B. SNOW, JR., JAY L. SILVERSTEIN, THOMAS TRAVERS, MARCIA J. RADOSEVICH,
6 PAUL RICKER, JEANNE WISNIEWSKI, KEVIN R. HILL, FRANK MEDICI, ALAN
7 SOKOLOW, ALFRED L. KOPIT, KPMG PEAT MARWICK LLP,

8
9 *Defendants.*
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12 FOR CLAIMANT-APPELLANT: MARSHALL R. KING, Gibson Dunn & Crutcher LLP,
13 New York, NY; Mark A. Perry, Gibson Dunn &
14 Crutcher LLP, Washington, D.C., *of counsel.*

15 Appeal from a judgment of the United States District Court for the Southern District of New
16 York (Seibel, J.).

17 UPON DUE CONSIDERATION, it is hereby ORDERED, ADJUDGED, and DECREED
18 that the judgment of the district court be AFFIRMED.

19 Claimant-Appellant Janus Capital Management LLC ("Janus") appeals from a June 3, 2009
20 order of the United States District Court for the Southern District of New York (Seibel, J.) allowing
21 a distribution of certain funds from a class action settlement fund but, in relevant part, declining to
22 approve the distribution of funds to parties, like Janus, whose claims were untimely filed.¹ The
23 district court had previously rejected all so-called "late-submitted claims" to the settlement in an oral
24 decision on May 7, 2009. Janus contends on appeal that the district court's decision to exclude
25 Janus's claim from the distribution constituted an abuse of discretion. We assume familiarity with
26 the remaining facts and procedural history of the case and with the issues presented for review.

27 "[A] district court overseeing [a] settlement distribution has inherent power to accept late

¹ Pursuant to this Court's order of March 8, 2010, granting Lead Plaintiffs' motion to remove their designation as appellees, there are no appellees in this appeal. See Order, Mar. 8, 2010 (No. 09-2718-cv).

1 claims despite [the] contrary terms of [an] agreement” among the parties. *In re Agent Orange Prod.*
2 *Liab. Litig.*, 821 F.2d 139, 145 (2d Cir. 1987) (describing the holding of *Zients v. LaMorte*, 459 F.2d
3 628 (2d Cir. 1972)), *superseded in part by statute as noted in SEC v. TheStreet.com*, 273 F.3d 222,
4 233 n.11 (2d Cir. 2001). Pursuant to *Zients*, a district court entertaining a late-submitted claim to
5 a settlement should examine the equities to determine whether to allow the claim. *See Zients*, 459
6 F.2d at 630-31. In the analogous context of determining whether a party has shown “excusable
7 neglect” of a deadline under an applicable federal rule, district courts make a similar “equitable”
8 determination, “taking account of all relevant circumstances surrounding the party’s” failure to act
9 in a timely manner. *Pioneer Inv. Servs. Co. v. Brunswick Assocs. Ltd. P’Ship*, 507 U.S. 380, 395
10 (1993). The factors a district court should consider include:

11 the danger of prejudice . . . , the length of the delay and its potential impact on judicial
12 proceedings, the reason for the delay, including whether it was within the reasonable
13 control of the movant, and whether the movant acted in good faith.

14 *Id.* In balancing the equities pursuant to *Zients*, it was proper for the district court in this case to look
15 to the *Pioneer* factors. *See, e.g., In re Crazy Eddie Sec. Litig.*, 906 F. Supp. 840, 844 (E.D.N.Y.
16 1995).

17 We have recognized in the past that, while there is “an institutionalized but limited flexibility
18 at the margin with respect to rights lost because they have been slept on,” the legal system relies on
19 deadlines to function, and that “every missed deadline” should not become “the occasion for the
20 embarkation on extensive trial and appellate litigation to determine the equities of enforcing the bar.”
21 *Silivanch v. Celebrity Cruises, Inc.*, 333 F.3d 355, 367-68 (2d Cir. 2003). Therefore, we take a “hard
22 line” when applying the *Pioneer* factors, and, because in the ordinary case there will be little
23 prejudice or disruption caused by allowing a late-submitted claim, we focus our analysis on the

1 asserted reason for the claimant's delay, "including whether it was within the reasonable control of
2 the [claimant]." *In re Enron Corp.*, 419 F.3d 115, 122 (2d Cir. 2005) (internal quotation marks
3 omitted). We review the district court's decision to allow or disallow a late-submitted claim for
4 abuse of discretion. *See, e.g., id.* at 124 (reviewing for abuse of discretion bankruptcy court's
5 application of the *Pioneer* factors); *cf. Manhattan-Ward, Inc. v. Grinnell Corp.*, 490 F.2d 1183, 1186
6 (2d Cir. 1974) (per curiam) (reviewing for abuse of discretion district court's grant of a motion for
7 extension of time under Fed. R. Civ. P. 6(b)).


8 We conclude that the district court did not abuse its discretion in declining to allow Janus's
9 late-submitted claim. First, the district court did not, as Janus asserts, commit legal error by
10 considering itself inextricably bound to apply the court's earlier deadline for the filing of claims.
11 Indeed, not only did the court discuss the application of the *Pioneer* factors, the court expressly
12 stated that it had "the power to vary the terms of a settlement agreement for equitable considerations"
13 and, in considering late-filed claims, that it "need[ed] to consider the excusable neglect
14 standard" May 7, 2009 Hg. Tr. at 17. The district court's discussion of the importance of the
15 prior deadline was, as discussed above, entirely proper.

16 We also find no abuse of discretion in the district court's weighing of the *Pioneer* factors.
17 It was entirely within Janus's "reasonable control" to file a timely claim with respect to its holdings
18 in the Berger funds. *Enron*, 419 F.3d at 122. Janus's agent, State Street Bank and Trust Co. ("State
19 Street"), became custodian of the Berger funds in 2001, Sanders Decl. ¶ 16, and Janus provides no
20 explanation why, following this event, State Street did not seek to standardize the trading records
21 of the Berger funds with its own accounting system. Moreover, Janus concedes that State Street held
22 all the information regarding the Berger funds' trading records on microfiche at the time the

1 settlement was announced, and therefore could have discovered the Berger funds' holdings in Oxford
2 Health Plans securities in time to file a claim. *Id.* ¶ 19. Finally, the district court did not clearly err
3 in concluding that allowing late-submitted claims would cause at least some prejudice to claimants
4 who had timely filed by diminishing those claimants' pro rata share of the settlement funds. *See* May
5 7, 2009 Hg. Tr. at 18.

6 We have considered Janus's remaining arguments and we conclude that they are without
7 merit. For the foregoing reasons, the judgment of the district court is AFFIRMED.

8 FOR THE COURT:
9 Catherine O'Hagan Wolfe, Clerk

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The signature is written in cursive over a circular seal. The seal contains the text "UNITED STATES", "SECOND CIRCUIT", and "COURT OF APPEALS".

A True Copy

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Catherine O'Hagan Wolfe, Clerk

United States Court of Appeals, Second Circuit

The signature is written in cursive over a circular seal. The seal contains the text "UNITED STATES", "SECOND CIRCUIT", and "COURT OF APPEALS".